

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-3036

United States of America,

Appellee,

v.

Kenyatta Cornelous,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: April 20, 2012

Filed: April 24, 2012

Before LOKEN, BOWMAN, and BENTON, Circuit Judges.

PER CURIAM.

Kenyatta Cornelous pleaded guilty to conspiring to manufacture, distribute, and possess with intent to distribute in excess of 50 grams of a cocaine base mixture and 5 kilograms of a cocaine mixture, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. In a written plea agreement, Cornelous waived his right to appeal his conviction with certain exceptions described in the appeal-waiver paragraph. After granting the government's motion for a downward departure based on Cornelous's substantial assistance, the district court¹ sentenced him to 320 months in prison and 5 years of

¹The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

supervised release. On appeal, Cornelous's counsel has moved to withdraw and has submitted a brief under Anders v. California, 386 U.S. 738 (1967), raising the following arguments.

Cornelous argues that the prosecutor committed prosecutorial misconduct by threatening him with a life sentence if he did not plead guilty, but this is an involuntary-plea claim not properly raised for the first time on appeal. See United States v. Villareal-Amarillas, 454 F.3d 925, 932 (8th Cir. 2006). Cornelous also faults the prosecutor for failing to seek a greater sentence reduction based on his cooperation with Florida authorities, but he has not shown that the government acted with an improper motive or irrationally. See United States v. Smith, 574 F.3d 521, 525 (8th Cir. 2009). He further challenges sentencing enhancements imposed for an aggravating role in the offense and for possessing a firearm in connection with the offense. We will not review the aggravating-role enhancement because Cornelous withdrew his objection to that enhancement prior to sentencing, see United States v. Thompson, 289 F.3d 524, 526-27 (8th Cir. 2002); and we will not review the firearm enhancement because it did not affect the advisory guidelines range and because the court ultimately departed below that range, see United States v. Baker, 64 F.3d 439, 441 (8th Cir. 1995).

Cornelous's remaining arguments are encompassed by his appeal waiver. We conclude that the waiver should be enforced. See United States v. Andis, 333 F.3d 886, 889-92 (8th Cir. 2003) (en banc). Moreover, Cornelous's valid guilty plea forecloses all pre-plea non-jurisdictional defects. See United States v. Staples, 435 F.3d 860, 864 (8th Cir. 2006).

Finally, having reviewed the record independently under Penon v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.